



October 16, 2001

Mr. Larry Schenk
City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2001-4684

Dear Mr. Schenk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153426.

The Housing Authority of the City of Paris (the "authority") received a request for copies of a specified transmittal letter, specified audiotapes of a particular meeting held by the authority's Board of Commissioners (the "board"), and information pertaining to the mailing addresses of the authority's "newly appointed Commissioners." You state that you have provided the requestor with the specified transmittal letter and one responsive audiotape. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.117(1) of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the requestor is the authority's Executive Director. The transfer of information within a governmental body or between governmental bodies is not necessarily a release to the public for purposes of the Public Information Act (the "Act"). *See* Attorney General Opinion JM-119 at 2 (1983). For example, a member of a governmental body, acting in her official capacity, is not a member of the public when that person requests information in the hands of that governmental body. Thus, an authorized official or employee may review records of the governmental body without implicating the Act's prohibition against selective disclosure. *See id.*; *see also* Open Records Decision No. 468 at 4 (1987). However, in Attorney General Opinion JC-120 (1999), we found that the review of a tape recording of a closed meeting is limited only to members of a governmental body.

The Executive Director is not a member of the governmental body. Therefore, with the exception of the requested audiotape of the closed session meeting of the authority's board, the authority has the discretion to release the requested information to the requestor. We note, however, that should the authority decline to exercise that discretion, it must, nonetheless, adhere to the following decision regarding the applicability of the exceptions that have been claimed for the requested information.

You claim that a responsive certified audiotape of a closed session of a meeting of the authority's board is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.¹ We agree. Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). You state that no such court order has been issued with regard to the requested audiotape. Therefore, the requested audiotape cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Accordingly, you must withhold the requested audiotape from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You also claim that the home mailing addresses of the authority's newly appointed commissioners are excepted from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). Section 552.024 provides:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing no later than the 14th day after the date on which:

(1) the employee begins employment with the governmental body;

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.
- (c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.
- (d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.
- (e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.

Gov't Code § 552.024. We note that a governmental body may only withhold the section 552.117 information of those current or former employees who make their section 552.024 election before the governmental body receives a written request for information. *See* Open Records Decision No. 530 at 5 (1989). However, if a governmental body receives a request for information within fourteen days after the date on which an employee begins his or her employment with the governmental body, the governmental body must withhold each employee's home address, home telephone number, social security number, and family member information from disclosure. *See* Gov't Code § 552.024(b), (d). You state, and provide documentation showing, that all of the commissioners in question were appointed to the authority's board on July 20, 2001. You also state that the authority received the request for information on July 26, 2001. Since the request for information was received by the authority within fourteen days of each commissioner being appointed to the board, we conclude that you must withhold the home mailing address of each commissioner from disclosure pursuant to section 552.117(1) of the Government Code.

In summary, the authority must withhold the requested audiotape from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The authority must withhold the home mailing address of each commissioner from disclosure pursuant to section 552.117(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

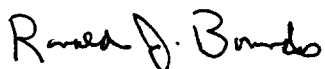
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 153426

cc: Ms. Christa Cherry
Route 1, Box 609-E
Powderly, Texas 75473
(w/o enclosures)